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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,258	09/30/2003	Koichiro Tani	4635-002	2067
22429	7590	03/31/2006	EXAMINER	
LOWE HAUPTMAN GILMAN AND BERNER, LLP			HAND, MELANIE JO	
1700 DIAGONAL ROAD			ART UNIT	
SUITE 300 /310			PAPER NUMBER	
ALEXANDRIA, VA 22314			3761	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/673,258

Applicant(s)

TANI, KOICHIRO

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

With respect to applicant's argument that the objection to claims 4-8 and 11-13 is overcome by a preliminary amendment filed September 30, 2003, Examiner acknowledges the amendment. Applicant's arguments with respect to the objection to claims 4-8 and 11-13 have been fully considered and are persuasive. The objection to claims 4-8 and 11-13 has been withdrawn and the claims are herein examined on their merits. Applicant's arguments, see Remarks, filed January 19, 2006, with respect to the rejection(s) of claim(s) 1-3, 9, 10 and 14-17 under 35 U.S.C. 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a different interpretation of a previously applied reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robles et al (U.S. Patent No. 6,004,306).

With respect to **Claims 1,15**: Robles teaches diaper 20 comprising containment assembly 22 further comprising a liquid-pervious topsheet 24, a liquid-impervious backsheet 26 absorbent core 28 disposed between said topsheet and said backsheet, extensible side panels 30 with proximal edges 80 and distal edges 82 (Fig. 1) (Col. 4, lines 25-36). Robles teaches that side panels 30 are bonded to containment assembly 22 at edge 80 in a bonding area of varying size and pattern (Fig. 1) (Col. 12, lines 60-62). As can best be seen from Figs. 1-3, tape fasteners 40 are disposed on a distal outer edge of side panels 30 that is laterally outward from an inner edge of side panels 30.

Robles does not explicitly teach separate side flap fixing parts and joint parts. Examiner asserts that the teaching by Robles of bonds of varying size and patterns makes possible separate side flap fixing parts and joint parts with a reasonable expectation of success, and either of fixing parts or joint parts can be positioned inward with respect to one another along a transverse direction of said diaper. Therefore it would have been obvious to one of ordinary skill in the art to identify a pattern comprising at least two separate bond points or lines of either equal or varying length as defining fixing parts and joint parts, respectively, said joint parts or fixing parts thus having either equal or differing lengths.

With respect to **Claim 2**: Robles teaches that side panels 30 are bonded to containment assembly 22 at edge 80 in an overlapping configuration (Fig. 1) (Col. 12, lines 57-62).

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With respect to **Claim 3,6,11**: Robles teaches that extensible side panels are comprised of waist panel 36 and thigh panel 38 of identical size that are bonded to edge 56 of containment assembly 22, therefore there exists first and second joint parts located in an upper and lower region, respectively, of distal edge 80. (Fig. 1) (Col. 10, lines 24-27, 48-50, Col. 12, lines 59-62) Examiner asserts that the joint parts will have substantially identical size as well given the identical size of the panels 36 and 38. (Col. 12, lines 21,22)

With respect to **Claims 4,12,13**: Robles teaches that extensible side panels are comprised of laminates of elastomeric nonwoven materials with a nonwoven coverstock material sandwiched therebetween. (Col. 13, lines 62-66)

With respect to **Claim 5**: As can best be seen from any of Figures 1-3, Robles teaches that fasteners 40 are disposed at a substantial center vertically along the outer edge of each of side panels 30.

With respect to **Claim 7**: Robles teaches that the side panel 30 is joined to the containment assembly 22 by heat bonding (Col. 13, lines 4-8), which also therefore teaches heat bonding for the constitution of any fixing or joint part bonds.

With respect to **Claim 8**: Robles teaches by reference to U.S. Patent No. 3,848,594 to Buell that tape fasteners 40 are comprised of a fastening layer or surface bonded to a back surface. (Col. 20, lines 64-66)

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With respect to **Claims 9 and 10**: Robles teaches that waist panel member 37 and thigh panel member 39 are initially joined separately to the diaper 20 (Fig. 5) (Col. 13, lines 31-36). Since Robles also teaches that attachment of side panels 30 to distal edges 80 is intermittent (Col. 13, lines 8-10), Examiner is concluding that Robles teaches attachment areas of differing size for the waist and thigh panels 36 and 38.

With respect to **Claim 14**: As stated with respect to Claim 1, side panels 30 are attached to diaper 20 at their distal edges 80.

With respect to **Claim 15**: As stated with respect to Claims 9 and 10, Robles teaches that waist panels 36 and 38 are attached separately to diaper 20 and also teaches an intermittent attachment pattern, thus encompassing the possibility of attachment areas of differing size.

With respect to **Claims 16,17**: Please see the rejections of claims 1 and 3 as these rejections collectively address all of the limitations of claims 16 and 17. Since Robles teaches that the bonding areas can vary in size the lengths and widths of each of either fixing part bonds or joint part bonds can be varied to result in a change in elastic modulus to the waist and thigh panels 36,38 and thus result in adjusted fitness around the waist of a user. Since Robles also teaches that waist panel 36 may differ in size from thigh panel 38, the joint parts would have to be adjusted to accommodate the differing lengths and thus their respective positions would necessarily have to be adjusted.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand
Examiner
Art Unit 3761

MJH

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Zalukaeva', with a long, sweeping horizontal stroke extending to the right.